

U. S. PTO Customer No. 25280

Case #2171

REMARKS

Claims 1, 4-9, 11-22, 24, 25, 27-33, 35-37, 42-46, 48-52, 54-56 and 58 were and remain pending in the application. No claims have been amended, canceled or added. Thus, claims 1, 4-9, 11-22, 24, 25, 27-33, 35-37, 42-46, 48-52, 54-56 and 58 remain subject to continued examination. Each of these claims is believed to be in condition for allowance. Accordingly, an action to that effect is respectfully requested at this time.

Art Rejections:

Claims 1, 4-9, 11, 19, 24, 25, 27-30, 33, 35, 37, 44-46, 48, 52 and 54 stand rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent 4,522, 857 to Higgins (Higgins '857) in view of EP 048, 968 to Porter et al.

Claims 1,4-11, 15-17, 19-31, 33-39, 44-46, 48-54, 56 and 58 stand rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent 5,540,968 to Higgins (Higgins '968) in view of Higgins '857 and in further view of Porter et al.

Claims 12-14 and 18 stand rejected under 35 U.S.C. 103(a) as being obvious over Higgins '968, Higgins '857 and Porter et al. and in further view of EP 309 816 to Turner et al..

Claims 16, 17, and 20-22 stand rejected under 35 U.S.C. 103(a) as being obvious over Higgins '857 and Porter et al and in further view of Higgins '968.

Claim 55 stands rejected under 35 U.S.C. 103(a) as being obvious over Higgins '857 and Porter et al. and in further view of US 6,089,007 to Hamilton et al.

Claim 55 stands further rejected as being obvious over Higgins '968, Higgins '857 and Porter et al. and in further view of US 6,089,007 to Hamilton et al.

U. S. PTO Customer No. 25280

Case #2171

Continued rejection of the claims on the above grounds is respectfully traversed and reconsideration is requested at this time in view of the unrefuted sworn declaration testimony of the Director of Development for the owner and manufacturer of the tiles disclosed in the primary Higgins '857 and Higgins '968 references as to the accepted wisdom in the art at the time of the invention which is supported by the experimental data in the secondary reference to Porter et al. and actual commercial practice.

Each of the claims specifically recites a carpet tile having a face weight less than or equal to about 15 oz/square yard and a cushion having a polymer weight less than about 20 oz/square yard. As best understood, there is no teaching or suggestion of such a combination within the art of record. To the contrary, the art all appears to teach that low face weight carpets are preferably paired with high weight foam coatings.

Applicants note that the Office Action relies upon the examples in Porter et al. as teaching a low face weight carpet within the range claimed. However, the Office Action ignores the fact that in all of the examples of Porter et al., this low face weight carpet is mated to a high weight cushion. Applicants respectfully note that a reference must be considered in its entirety - including portions which would lead away from the claimed invention. Applicants do not suggest that low face weight carpet fabrics were unknown. Rather, what Applicants contend is that pairing such low face weight carpet with a low weight attached cushion was contrary to the accepted wisdom in the art. Porter et al. supports this contention by pairing the low weight carpet fabric exclusively with high weight foams.

The teachings from Porter et al. that the accepted wisdom was to pair low weight carpet fabric with high weight cushioning is confirmed by the declaration of Richard Kilpatrick, a person with 16 years of actual experience in the development of carpet constructions and the

U. S. PTO Customer No. 25280

Case #2171

current Director of Development for the company which owns the primary Higgins '857 and Higgins '968 patents. The Office Action dismisses Mr. Kilpatrick's declaration as merely an opinion regarding the accepted wisdom in the art since there is no factual evidence regarding that accepted wisdom. This misses the point. Mr. Kilpatrick is clearly a person of skill in the art who has indicated that he was skeptical regarding the suitability of the inventive combination since he believed that undue crushing would occur. As such his opinion is entitled to some weight. This is particularly true in view of Mr. Kilpatrick's substantial familiarity with the products disclosed in the primary reference Higgins patents.

Importantly, Mr. Kilpatrick's opinion is based on actual commercial practices in the carpet industry and is consistent with all the facts in the prior art of record as well as actual commercial practices utilized in the industry. In this regard, it appears that none of the art of record suggests combining low face weight carpets with low weight cushions. To the contrary, in Porter et al. the low face weight carpets are paired exclusively with high weight cushions. Moreover, to the best of Applicant's knowledge no commercial carpet tile products which utilized the claimed combination of low face weight carpet and low weight attached cushion were ever manufactured by the holders of the Higgins patents or any other entity prior to the present invention. Thus, either these manufacturers were engaged in intentional waste or they believed that higher weight carpet fabrics and/or high weight cushions were required thereby supporting Mr. Kilpatrick's statements regarding accepted wisdom. Since the conclusion of intentional waste makes no economic sense, the actual commercial practice thus appears to support Mr. Kilpatrick's declaration.

The Office Action relies upon the statement in Rasnick Jr. et al. that "there is a continuing trend in the industry towards producing carpets and other pile fabrics with lower face

U. S. PTO Customer No. 25280

Case #2171

weights" to support the opinion of obviousness. However, this statement deals with only half of the equation and says nothing about the attached cushion. Thus, it is respectfully submitted that this limited teaching would not have provided proper motivation to depart from the accepted wisdom in the art as reflected in Porter et al. and established commercial practices.

It appears that the Office Action concludes that because low weight cushions and low weight face fabrics were known, that a product combining those elements in a carpet tile is necessarily obvious. This conclusion of obviousness is reached in spite of the fact that the art of record only teaches mating low weight carpet to high weight cushions, and in spite of the fact that a person of undisputed skill in the art has stated that such a practice would be contrary to accepted wisdom. Moreover, the conclusion of obviousness is at odds with actual industrial practice which prior to the present invention had never adopted such a product.

In support of their position regarding the state of accepted wisdom, Applicants have provided the declaration of Mr. Kilpatrick. This statement is fully consistent with the known prior art and actual industrial practice. Applicants are unsure as to what else (if anything) should be required to establish the accepted wisdom. As will be appreciated, it is highly unlikely that a definitive statement is available setting forth the state of accepted wisdom. Rather, what is available (and what has been provided) is evidence regarding the subjective belief of a skilled person thoroughly familiar with the art of record. However, in order to progress prosecution Applicants respectfully request that the Examiner indicate the type of reasonable additional evidence which would be accepted to establish the accepted wisdom in the art.

U. S. PTO Customer No. 25280

Case #2171

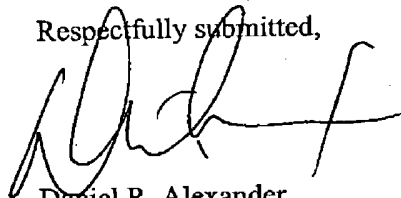
CONCLUSION:

In light of the Remarks set forth above, Applicants respectfully submit that all claims are in condition for allowance at this time. While an attempt has been made to address all outstanding issues, to any extent that one or more issues remain, the undersigned respectfully requests a telephone conference to resolve such issues.

A one month extension of time is submitted along with this Response. Please charge any additional fees or credit any overpayment in connection with this Response (including any extension fees) to Deposit Account 04-0500.

March 26, 2004

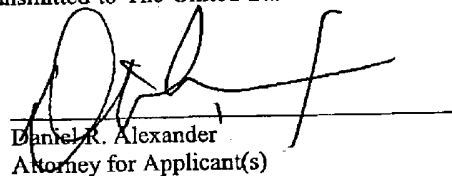
Respectfully submitted,



Daniel R. Alexander
Attorney for Applicant(s)
Registration Number 32,604
Telephone: (864) 503-1372

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted to The United States Patent and Trademark Office at 703-872-9306 on March 26, 2004.



Daniel R. Alexander
Attorney for Applicant(s)